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GROUP, INC., f/k/a DRUGMAX, INC., a Nevada corporation and  
Cross-Complainant FAMILYMEDS, INC., a Connecticut  
corporation

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MCKESSON CORPORATION, a Delaware  
corporation,

Plaintiff,  
v.

FAMILYMEDS GROUP, INC., f/k/a  
DRUGMAX, INC., a Nevada corporation,

Defendant.

FAMILYMEDS GROUP, INC., f/k/a  
DRUGMAX, INC., a Nevada corporation,

Counterclaimant,  
v.

MCKESSON CORPORATION, a Delaware  
corporation,

Counterdefendant.

FAMILYMEDS, INC., a Connecticut  
corporation,

Cross-Complainant,  
v.

MCKESSON CORPORATION, a Delaware  
corporation,

Cross-Defendant.

CASE NO. CV07-5715 WDB

**DECLARATION OF MATTHEW S.  
KENEFICK IN SUPPORT OF  
ADMINISTRATIVE MOTION TO FILE  
DOCUMENTS UNDER SEAL**

**Local Rule 7-95**

Accompanying papers: Administrative Motion;  
and (Proposed) Order

Complaint filed:	Nov. 9, 2007
Counterclaim filed:	Dec. 17, 2007
Cross-Complaint Filed:	Dec. 17, 2007
Trial date:	none set

1 I, Matthew S. Kenefick, declare:

2 1. I am an attorney at law duly licensed to practice before all the Courts of the state of  
3 California, as well as all of the United States District Courts located within the state of California,  
4 and am an attorney with Jeffer, Mangels, Butler & Marmaro LLP ("**JMBM**"), attorneys of record  
5 for Defendant and Counterclaimant Familymeds Group, Inc., f/k/a Drugmax, Inc., a Nevada  
6 corporation and Cross-Complainant Familymeds, Inc., a Connecticut corporation ("**Familymeds**").  
7 I have personal knowledge of the facts set forth in this declaration and could competently testify to  
8 each of the facts if called upon to do so. My knowledge of the facts set forth in this declaration  
9 arises from the fact that at all applicable times, either I or one of my colleagues at JMBM have been  
10 one of the attorneys primarily responsible for the litigation of the within action.

11 2. In connection with the Motion for Summary Judgment, or, in the Alternative,  
12 Summary Adjudication filed by McKesson Corporation ("**McKesson**") (the "**MSJ**") in this Action,  
13 McKesson submitted the Declaration of Ana Schrank in Support of Motion for Summary Judgment  
14 or, in the Alternative, Summary Adjudication by McKesson Corporation (the "**Schrank**  
15 **Declaration**"). In the Schrank Declaration, Ms. Schrank declares at paragraph 3(a) that the Supply  
16 Agreement (as that term is defined therein) is a confidential agreement.

17 3. The Supply Agreement, at Paragraph 13, designates the terms of that agreement as  
18 proprietary and confidential.

19 4. The Prime Warehouse Supplier Agreement by and between FM Inc., Valley Drug  
20 Company South, and D&K Healthcare Resources, Inc. and dated December 28, 2004, (the "**First**  
21 **Agreement**"), provides, at paragraph 18, that the terms set forth therein are to be treated as  
22 confidential and disclosure is to be limited to employees of the parties which have a reasonable  
23 need to have access to such information.

24 5. On December 27, 2005, DrugMax, FM, Inc., and D&K entered in that certain written  
25 First Amendment to Prime Warehouse Supplier Agreement, which provided, *inter alia*, to amend  
26 certain terms of the First Agreement (the First Agreement, as amended, shall be referred to herein as  
27 the "**First Amendment**"). The First Amendment did not modify paragraph 18 of the First  
28 Agreement, which therefore subsisted and the provisions of the First Amendment were therefore

1 designated confidential.

2 6. During discovery, McKesson produced certain materials and information, which  
3 McKesson designated as confidential.

4 7. In opposing McKesson's MSJ, Familymeds intends to file the following documents  
5 which discuss, address, and disclose the terms of First Agreement, First Amendment, and Supply  
6 Agreement, as well as those materials designated confidential by McKesson during discovery.  
7 Familymeds, therefore, requests to file the below indicated portions of the following documents  
8 under seal:

9 Separate Statement of Disputed, Undisputed and Additional Facts in  
10 Opposition to Motion for Summary Judgment or, in the Alternative,  
Summary Adjudication by McKesson Corporation at:

11 p.9, lines 2-4, 5-6, 7-11, 22-23, 25-26, and 28; p.10, lines 2-5;  
12 p.12, lines 20-21; p.16, lines 19-20; and p.17, lines 7-9.

13 Memorandum of Points and Authorities in Opposition to Motion for  
14 Summary Judgment or, in the Alternative, Summary Adjudication by  
McKesson Corporation at:

15 p.3, lines 17-28; p.4, lines 1, 3-11, 28; p.5, lines 1-8, 10, 12-  
16 13; p.7, line 7; and p.15, lines 12-13, 22-23.

17 Declaration of Matthew S. Kenefick in Opposition to Motion for  
Summary Judgment or, in the Alternative, Summary Adjudication by  
McKesson Corporation at:

18 Exhibit 4 (those portions marked as Exhibit 1 thereto); Exhibit  
19 5 (those portions marked as Exhibit 1 thereto); Exhibit 7; and  
Exhibit 8.

20 Declaration of Edgardo Mercadante in Opposition to Motion for  
21 Summary Judgment or, in the Alternative, Summary Adjudication by  
McKesson Corporation at:

22 p.8, line 28; and p.9 lines 1-2, 8-9.

23 Declaration of Christian Tregillis in Opposition to Motion for  
24 Summary Judgment or, in the Alternative, Summary Adjudication by  
McKesson Corporation at:

25 p.3, lines 14-15, 21; p.4, line 5; indicated portions of Exhibit  
26 2; indicated portions of Exhibit 4; indicated portions of  
Exhibit 5; and indicated portions of Exhibit 6.

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1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on July 30, 2008

/s/ Matthew S. Kenefick  
MATTHEW S. KENEFICK, Declarant

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